

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION - SIOUX CITY**

PEG BOUAPHAKEO, et al.,)

Plaintiffs,
)

v.) Civil No. 5:07-cv-04009-JAJ-TJS

TYSON FOODS, INC.)

**AMENDMENT TO PLAINTIFFS' MOTION IN LIMINE
TO PRECLUDE EVIDENCE OR ARGUMENT ON ISSUES
OF COMPENSABILITY, DE MINIMIS, WILFULNESS
AND GOOD FAITH**

Plaintiffs hereby amend their *Motion in Limine to Preclude Evidence or Argument on Issues of Compensability and De Minimis, Wilfulness and Good Faith* filed October 7, 2010 (Dkt. 154), as follows:

1. In light of the defendant's October 7, 2010 withdrawal of any contention that the limitations period is less than three years or that the violation alleged in this case was not wilful or lacking in good faith, plaintiffs withdraw that part of their motion in limine seeking to preclude the defendant from offering evidence or argument on the issues of wilfulness and lack of good faith set forth in paragraph 5 of such motion (Dkt. 154).

2. In light of defendant's newly filed motion in limine to exclude evidence

or argument that the “K-Code” minutes paid for the activities at issue increased from 4-7 minutes to 20-26 minutes per day in June 2010, plaintiffs’ amend their motion in limine to seek exclusion of any evidence or argument that such change was a voluntary remedial measure or anything other than direct, involuntary compliance with the dictates of the permanent injunction quoted in paragraph 1 of plaintiffs’ motion in limine. (Dkt. 154). For the reasons given in such motion, the defendant should be collaterally estopped from denying that the “K-Code” minutes for the activities at issue are paid pursuant to the direct terms of such injunction which mandates that the defendant “implement recordkeeping practices sufficient to record the time spent by each employee in performing the pre-shift and post-shift activities found to be compensable under the Act.” *Reich* injunction ¶3, entered July 30, 1996;

See also Reich v. IBP, Inc., 1996 WL 137817 (D. Kan. 1996), *affirmed sub nom.*, *Metzler v. IBP, Inc.*, 127 F.3d 959 (10th Cir. 1997).

3. Plaintiffs’ motion in limine otherwise remains unchanged from what was originally stated in docket no. 154.

Respectfully submitted,

/s/ Robert L. Wiggins, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on counsel via electronic mail delivery of same, properly addressed, to the following:

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This 8th day of October, 2010.

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